

**DEPARTMENT OF STATE REVENUE
FIRST SUPPLEMENTAL LETTER OF FINDINGS NUMBER: 95-0495 CS
Controlled Substance Excise Tax
For The Tax Period: 1995**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. **Controlled Substance Excise Tax**: Possession

Authority: IC 6-7-3-5; Cliff v. Indiana Department of State Revenue, 660 N.E.2d 310 (1995).

The taxpayer protests assessment of controlled substance excise tax.

STATEMENT OF FACTS

Taxpayer's listed counsel was contacted throughout 1998 to schedule a hearing. The Department never received a response from counsel. Subsequent attempts to contact the taxpayer were made. A hearing was scheduled for taxpayer to address his protest. Taxpayer failed to appear. A second hearing was scheduled for which taxpayer again failed to appear. Using the best information available, efforts were made to contact taxpayer and taxpayer failed to respond. Thus, a Letter of Finding was issued January 25, 1999 that denied the taxpayer's protest. Taxpayer petitioned the Department for a rehearing. The Department granted the rehearing and an administrative hearing was conducted via telephone conference on June 30, 1999.

I. **Controlled Substance Excise Tax**: Possession

DISCUSSION

Taxpayer was arrested for possession of marijuana on March 17, 1995. The Department issued the taxpayer a Controlled Substance Excise Tax (CSET) assessment on July 26, 1995. Taxpayer filed a protest of the CSET assessment via counsel on August 9, 1995. Taxpayer was convicted of marijuana possession in September 1995. Indiana Code 6-7-3-5 states:

The controlled substance excise tax is imposed on controlled substances that are:

- (1) delivered,
- (2) possessed; or
- (3) manufactured;

in Indiana in violation of IC 35-48-4 or 21 U.S.C. 841 through 21 U.S.C. 852

Indiana law requires that the Department's assessment be "first in time" to avoid violated principles of double jeopardy. Clift v. Indiana Department of State Revenue, 660 N.E.2d 310, 313 (1995). In this case, the Department's assessment came before the taxpayer was placed in jeopardy. The Department's assessment occurred on July 26, 1995 and the disposition of the taxpayer's criminal case occurred in September 1995. Thus, under Indiana law, taxpayer is liable for the tax.

FINDING

The taxpayer's protest is denied.

PMJ/BK/MR-992807